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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,804	09/21/2000	Douglas E. Trent	P56103C	8933
8439	7590	08/30/2006	EXAMINER	
ROBERT E. BUSHNELL 1522 K STREET NW SUITE 300 WASHINGTON, DC 20005-1202			BANGACHON, WILLIAM L	
			ART UNIT	PAPER NUMBER
			2612	

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/666,804

Applicant(s)

TRENT ET AL.

Examiner

William L. Bangachon

Art Unit

2612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 08 August 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-12,23-28 and 35-49.
Claim(s) objected to: 22,33 and 34.
Claim(s) rejected: 13-21,29-32 and 50-53.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


BRIAN ZIMMERMAN
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: applicant's second set of arguments after the filing of the final Office action have been fully considered but they are not persuasive.

Applicant argues that the brief passage referred to in the Examiner's traversal of Applicant's first set of arguments in an Advisory Action filed 7/20/2006 is an abbreviation of the entirety of a multi-page discussion of the deficiencies in this rejection. Application alleges that it is disingenuous for the Examiner to respond to a single clause in a multi-page argument while ignoring both the entirety of the language of the pending claims and the differences between that language and the prior art, as is required by the express mandate of 35 U.S.C. 103(a). Specifically, independent claim 13 defines "a housing ... after movement of said lid ..." in conjunction with Applicant's "controller ... operationally coupled ... to operationally respond to data signals received from sources external to said container ... by regulating said movement ...", and "in dependence upon said information." Independent claims 29, 50 and 52 contemplate "a housing selectively opening ..." in conjunction with a "control stage responding to data signals ...by selectivelyaccommodating said release from said enclosed interior" as well as "a housing selectively opening ... in dependence upon said information ..." [Remarks, page 19]. The Examiner disagrees with applicant's argument in page 19 that the Examiner utterly ignores the relation between Applicant's controller and the definition of that controller in Applicant's claim 13 as "regulating said movement" or in independent claims 29, 50 and 51 as "selectively accommodating said release". Applicant alleges that this is a difference between the passive behavior of the lid in Wagener '505' and Applicant's active regulation in claim 13 or selective accommodation in claims 29, 50 and 52. As such, in Figure 3 of Wagener, the protected device 12 shows a lid with an arrow indicating the opening and closing of the lid (i.e. movement of said lid) {Wagener, col. 3, lines 17-21}. The flowchart in Figure 3, step 3,3, also describes a movement (i.e. opening) of said lid. Column 5, lines 45-47 in Wagener summarizes the relationship between the controller (10) and movement of said lid. In this case, the controller (10) monitors the movement of said lid with an alarm sensor. The alarm sensor determines the removal or exchange of components within the enclosure (11) {Wagener, col. 5, lines 63-67}. This relationship is shown in steps 3.3-3.5 in the flowchart of Figure 3. The controller (10) is interrogated by the guard computer 31 across a network interface {Wagener, col. 4, lines 41-45}. In response to an interrogation (i.e. data signal request) by the guard computer 31, the removal or exchange of components within the enclosure (i.e. accomodating said release in dependence upon information in the storage facility 16) is transmitted to the guard computer 31 {Wagener, col. 5, lines 27-44}. The claimed invention and Wagener are directed to the same subject matter, container manager. Both the claimed invention and Wagener monitors activities within the container.